THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.24292 OF 2005

DATED: 26TH JUNE, 2006.

Between :

Mangilal Nayak Bhukya … Petitioner

And

1. Principal Secretary to Government,
   Social Welfare Department (Tribal Welfare),
   A.P. Secretariat, Hyderabad,

And 2 others. .. Respondents

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WRIT PETITION NO.24292 OF 2005

ORDER :

By order dated 22-11-2005 vide G.O.Ms.No.06, Social Welfare (GCC-II) Department, the petitioner was appointed as one of the Directors of the Girijan Co-operative Corporation Limited, Visakhapatnam, for a period of two years. While so, a show- cause notice dated 20.9.2005, was issued calling upon the petitioner to show-cause as to why he should not be disqualified/removed from the office of Director under bye-laws 18 and 19 of the Girijan Co-operative Corporation Limited, Visakhapatnam, within 7 days on account of four charges mentioned therein. The petitioner states that he received the said show-cause notice only on 21.10.2005 through registered post, and thus, the time granted for submitting the reply would expire only on 28.10.2005. However, a final order was passed vide G.O.Rt.No.469, Social Welfare (GCC-II) Department, dated 25.10.2005 removing the petitioner from the office of Director and the same was received by the petitioner on 5.11.2005 by fax. The said order is under challenge in this writ petition, primarily on the ground that the order of removal, being passed even before the expiry of seven days time granted for submitting his explanation, was arbitrary, illegal and in violation of the principles of natural justice.

It is stated that as a matter of fact, the petitioner submitted his explanation on 25.10.2005 through registered post, well within seven days time from the date of receipt of the show-cause notice. It is also stated that the impugned order of removal alleging that the petitioner

had suffered disqualification under bye-laws 18 and 19 of the Girijan Co-operative Corporation Limited, Visakhapatnam, are absolutely false and incorrect, since he never obtained any loan from any Co-operative Society. Hence, this writ petition seeking a Writ of Certiorari to quash the impugned G.O.Rt.No.469, Social Welfare (GCC-II) Department, dated 25.10.2005.

In the counter-affidavit filed by the Vice Chairman & Managing Director of the Girijan Co-operative Corporation Limited, Visakhapatnam, it is stated that the show-cause notice was issued by the 1st respondent on 20.9.2005 and a copy of the same was forwarded to the 3rd respondent for serving the same on the writ petitioner. Accordingly, the 3rd respondent sent the said notice to the petitioner through special messenger on 13.10.2005. When the special messenger went to the village of the writ petitioner and tried to serve the show-cause notice on 14.10.2005, the writ petitioner refused to receive the same. Accordingly, the special messenger submitted a report to the 3rd respondent. In the circumstances, another copy of the show cause notice was served on the petitioner on 21.10.2005 in person when he came to the office of the 3rd respondent to attend the meting of the Board. Thereafter, the 1st respondent passed the Impugned order dated 25.10.2005, since the petitioner did not submit any explanation within the time specified in the show-cause notice. Hence, the allegation that the 1st respondent passed the order without waiting for the period of seven days is incorrect.

The petitioner filed a reply affidavit disputing the version of the respondents, and reiterating that the show-cause notice sent by registered post was received by him only on 20.10.2005. It is stated that he also received a sealed envelop from the Secretary on 21.10.2005 personally. Thereafter, he was served with the impugned order by FAX on 5.11.2005. In the meanwhile, he had submitted his explanation vide letter dated 25.10.2005.,

I have heard the learned counsel for the petitioner as well as the learned Government Pleader, appearing for the respondents and perused the original record produced by the Government Pleader.

The record placed before this Court by the learned Government Pleader for Social Welfare shows that the show-cause notice dated 9-9-2005 was dispatched to the petitioner as well as the 3rd respondent by registered post. Whereas the 3rd respondent, as per postal acknowledgement available in the record, received the proceedings on 1-10-2005, so far as the petitioner is concerned, the postal acknowledgment though shows that it was served on the addressee on 7-10-2005, admittedly it was not signed by the petitioner. The specific case of the writ petitioner is that it was never received by him. The record also shows that the 3rd respondent sent the show-cause notice by Special Messenger for service on the petitioner, however when the Special Messenger tried to serve the proceedings, he refused to receive the same. To that effect, the Special Messenger submitted a report to the 3rd respondent. Thereafter, the 3rd respondent sent the show-cause notice by registered post on 17-10-2005 which was received by the petitioner on 20-10-2005. It is also not in dispute that on the next day i.e., on 21-10-2005 a copy of the said show-cause notice was served on the petitioner in person when he attended a Board meeting.

Thus, it is clear that the only material available on record to show that the show-cause notice was served on the petitioner on 7-10-2005 is the postal acknowledgment which bears the signature of one person in Telugu. Admittedly the said acknowledgment was not signed by the petitioner and since the petitioner had categorically denied the receipt of the same, in the absence of any other material to substantiate the case of the respondents, I am unable to accept the version of the respondents that the show-cause notice was served on the petitioner on 7-10-2005. That apart, the impugned order dated

25-10-2005 did not refer to the show-cause notice much less the date of service of the same on the petitioner.

Viewed from any angle, I do not find any justifiable reason to disbelieve the plea of the petitioner that the show-cause notice was served on him only on 21-10-2005. Consequently, it follows that the impugned order of removal which was passed without taking into consideration the version of the writ petitioner is violative of the principles of natural justice and therefore liable to be set aside on that ground alone. Accordingly, the impugned order is hereby set aside and the Writ Petition is disposed of with a direction to the 1st respondent to consider the explanation submitted by the petitioner which is available from pages 16 to 18 of the material papers filed along with this writ petition and pass appropriate orders afresh in accordance with law. No costs.

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G. ROHINI, J.

Dt. 26-6-2006

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